the buyer acquires these claims. In a secondary market trade of a home mortgage, before the trade, the seller of the mortgage has a contractual claim to monthly payments, and (in a typical home mortgage) has a right to foreclose on the mortgage and possess the home in case the buyer defaults on the payments. In a typical secondary transaction, the buyer acquires exactly the same rights that the seller sells.[1]

In contrast, Fraser United States Patent No. 5,995,947 (hereinafter "Fraser") only discusses activities that occur during origination of a home mortgage.

At this point, a bit of background is necessary. The Office Action reflects confusion between two terms that have similar names but that have completely different meanings. As noted in the Action, Fraser briefly mentions "secondary mortgages." A "secondary mortgage," by definition, has a term that at least partially overlaps with the term of the primary mortgage on the same property. A secondary mortgage is almost always subject to different contractual terms than the primary mortgage – different terms apply in the event of default, a secondary mortgage typically bears a higher interest rate, etc.

In contrast, in a typical "secondary transaction," the buyer acquires exactly the same contractual claims against the original borrower that the seller had. (There are exceptions, for example, those discussed in footnote 1. However, even in these cases, the "secondary transaction" leaves the underlying financial product intact.) The seller's rights are extinguished at the same instant that the buyer's are created – there is no overlap in time between the buyer's rights and the seller's rights.

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[1] In some cases, a "secondary" buyer acquires slightly different rights. For instance, in mortgage-backed securities issued by Fannie Mae, Freddie Mac or Ginnie Mae, the agency "wraps" mortgages in an insurance policy, and sells insured securities. A buyer acquires only a claim to timely payment of principal and interest, not the right to foreclose. The right of foreclosure stays with the agency, and the security holder acquires only a derivative right to the proceeds. In other cases, for instance "treasury strips," a buyer on the secondary market buys only the right to payment of principal, or payment of interest, while a trustee retains nominal title to the underlying financial product. In a secondary trade of insurance, the buyer acquires the right to payment of insurance premiums, and assumes (at least part of) the obligation to cover insured losses. The common theme in a "secondary trade" is that the transaction is completely symmetric – the buyer acquires some claim on future payments, and the seller loses exactly the same rights, or assumes a mirror-image liability to make the payments.

In contrast, the parties' obligations to a broker remain unchanged by any subsequent sale – if the commission remained due before the sale, the obligation remains after the sale.

A second common theme is that the price at which a secondary trade occurs reflects the value of the underlying obligation, not the value of a service performed. In contrast, a broker is paid for a service, not for a stream of future payments.

Turning now to the specific distinctions between the claims and Fraser, Fraser only discusses origination of mortgages. There are three parties mentioned in Fraser: the borrower, the originating lender, and a mortgage broker. Fraser's mortgage broker never acquires any ownership interest in the mortgage loan – for example, the broker is never owed monthly payments, and never acquires a right to foreclose. If Fraser's broker does not own such rights, no transaction involving that broker can be described as a "secondary transaction." Fraser's broker's claim for a commission (whether that commission is paid by the borrower or the lender) is an entirely separate legal obligation from any obligation of payment or right of foreclosure. Fraser never mentions any party, other than the originating lender, that acquires any of the rights that would be associated with a "secondary" trade, and no party that ever holds such rights but has them extinguished by any "sale." Fraser never discusses any transaction that occurs with respect to the same mortgage loan. Without these characteristics, there cannot be any "secondary transaction." Thus, it is clear that Fraser cannot anticipate or make obvious any claim, such as Applicant's, that recites any activity relating to a "secondary transaction" or "secondary market."

Accordingly, applicant respectfully submits that this application is in condition for allowance. Reconsideration and prompt allowance of this application are respectfully requested.

Respectfully submitted,

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APPENDIX

Marked-Up Claims

Please amend claims 40, 66, 69, 78, 94, and 98 as follows:

40. (Amended) A method for performance by a provider of intermediation services, comprising the steps of:

in a market for a class of financial products in which transactions for products of the class occur among market participants in distinct first and second sectors, the first and second sectors being origination and secondary trading of products of the class, providing intermediation services for transactions in each of the two sectors;

a predetermined pricing schedule for the intermediation services providing credits for transaction fees paid by a party for intermediation of transactions in the first sector for redemption against fees payable by the party for intermediation of transactions in the second sector.

66. (Amended) A computer programmed to:

provide intermediation data processing functions [for a market] in distinct first and second sectors of a market for a class of financial products, [and to] the first and second sectors being origination and secondary trading of products of the class among market participants;

record fees due for intermediation services in both sectors of the market to participants in the market using the computer; and

according to a predetermined pricing schedule, [to] record a portion of fees recorded for intermediation of transactions in the first [market] sector as credits for redemption against transaction fees for transactions in the second sector.

69. (Amended) The computer of claim [68] 66, further comprising:

hardware and/or software designed to obtain information from applicants seeking the financial products, the information relating to the qualifications of the applicants relative to underwriting standards of a plurality of offerors, for retail origination of the financial products, and to store the application information in a database; and

hardware and/or software designed to match the application information against standards of a plurality of offerors.

78. (Amended) A method for performance by a provider of intermediation services, comprising the steps of:

in a market for a class of financial products in which transactions occur in distinct first and second sectors, the first and second sectors being origination and secondary trading of products of the class among market participants, providing intermediation services for transactions in each of the two sectors; and

offering information for sale to parties conducting transactions in the second sector, the information being information captured in the course of providing intermediation services in the first sector, the offer being under a prearranged pricing schedule providing reductions in the price of the information as fees increase for intermediation services provided for transactions in the first sector.

94. (Amended) A computer programmed to:

provide intermediation data processing functions for transactions in a class of financial products in distinct first and second sectors, the first and second sectors being origination and secondary trading of products of the class among market participants; and

provide access to information to parties conducting transactions in the second sector and to record charges for that access, the information being information captured in the course of providing intermediation services in the first sector.

98. (Amended) The computer of claim 94, being further programmed:

to record fees due for intermediation services rendered in both sectors of the market to users of the computer; and

according to a predetermined pricing schedule, to record a portion of fees recorded for intermediation of transactions in the first [market] sector as credits for redemption against transaction fees for transactions in the second sector.